



**OFFICE OF  
THE ATTORNEY GENERAL  
AUSTIN, TEXAS**

FRANK DANIEL  
ATTORNEY GENERAL

May 12, 1947

Hon. George H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Opinion No. V-180

Re: Proper procedure to be followed in making a supplemental assessment on any land for years prior to the time such land passes into the ownership of a person who is a bona fide purchaser for value without notice of such fact.

Dear Sir:

You request the opinion of this Department upon the question presented to you by Honorable James C. Martin, County Attorney of Nueces County, in his letter of March 18, 1947. We quote below Mr. Martin's letter covering the factual basis upon which our opinion is requested. This letter follows:

"Mr. Dub Allen has referred to me your letter dated March 12, 1947, concerning the right of the Tax Collector to assess and collect taxes on land for years prior to the time at which the present owner acquired title to such land. (There has been a sale of the land in question to a bona fide purchaser for value without notice of the fact that the land had not been assessed for prior years.) The discovery was made recently that the land had not been assessed and was not on the tax rolls. The property owner is willing to pay for the years during which he has owned the land but refuses to pay taxes for those years prior to the time he purchased the land, not then having any notice of the fact that there had been no taxes theretofore paid on such land.

"The basis of his contention is the last sentence of Article 7346, which reads as follows:

"No re-assessment of any property shall be held against any innocent purchaser of the same if the tax records of any county fail to show any assessment (for any year so re-assessed) by which

said property can be identified and that the taxes are unpaid.'

"If this article is given effect how can we make a supplemental assessment on any land for years prior to the time at which such land passes into the ownership of a person who is a bona fide purchaser for value without notice of such fact?"

The above quoted sentence from Article 7346, V.C.S., must be read together with Article 7347, V.C.S., in arriving at an answer to your question. The pertinent portion of Article 7347 is as follows:

"... provided, that the certificate of any tax collector given during his term of office that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this law for any years prior to the date of such certificate, or such examination; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to."

Careful reading of the full text of the above Articles reveals that they were passed in a single bill (Chapter 130, 29th Legislature) to provide a method for two things, as follows:

1. Assessment and collection of taxes on real property omitted from the tax rolls.
2. Re-assessing and collecting the tax on real properties on which former assessments are invalid.

Careful reading of the above quoted provisions relating to innocent purchasers reveals that they do not relate to property omitted from the rolls, but relate solely to property on which assessment was attempted and which is being re-assessed because the original assessment was invalid.

If the property was omitted from the rolls and never assessed, naturally a search of the records would reveal no payments

and no facts that could lead a Tax Assessor-Collector or purchaser to believe payments had been made. The search itself would put a purchaser on notice that the property had been omitted from the rolls and that the taxes had not been paid. An Assessor-Collector's certificate to the contrary would not bind the State against the true facts. Obviously, it was for these reasons that the Legislature gave no "innocent purchaser" protection in the case of property entirely omitted from the tax rolls.

In the case of re-assessment of property once on the rolls (but under invalid assessment) the Assessor-Collector or the purchaser may have been misled and caused to believe from the existing invalid assessment that no unpaid assessment was outstanding. It is in this case that "innocent purchaser" protection is afforded. Even in such case, a person cannot be an innocent purchaser and thereby prevent re-assessment unless the facts show that on or before the date of purchase he had a proper tax certificate showing payment, or (1) that upon examination by himself or his agent or legal representative the tax rolls of the county failed to show any assessment against such property sufficient to identify it; and (2) the tax rolls failed to show that the taxes were unpaid at the date such rolls were examined to ascertain the condition of any property as to unpaid taxes. It must further appear that one claiming to be an innocent purchaser relied upon the correctness of the tax roll which failed to show assessments against such property sufficient to identify it, and which failed to show that the taxes were unpaid at the date such rolls were examined.

Except in this limited scope one cannot be an innocent purchaser as to ad valorem taxes accruing prior to the purchase. Whether or not such a purchaser is entitled to rely upon this statutory provision involves, in any event, factual determinations; and unless he is able to show all of the factual conditions prescribed by the statute, he cannot be an innocent purchaser.

The Commissioners' Court may proceed with re-assessment of such property in accordance with the statutes relating thereto until such time as it finds from the facts that before purchase of the property the purchaser examined (or had examined) the tax rolls and that such rolls failed to show unpaid assessments against the property sufficient to identify it and that he innocently relied upon the correctness of such tax rolls as to no unpaid taxes being due.

In no event are you prohibited from making a supplemental assessment roll on property entirely omitted from the rolls.

#### SUMMARY

Articles 7346 and 7347, V.C.S., providing for assessment of property omitted from the rolls and re-assessment of property invalidly assessed, gives

"innocent purchaser" protection under certain conditions in cases of re-assessment but not in cases of supplemental assessment of property entirely omitted from the tax rolls. In cases of re-assessments, all fact conditions must be shown to exist before Commissioners' Court is justified in not re-assessing the property.

Yours very truly,

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